

**Commonwealth of Kentucky
Workers' Compensation Board**

OPINION ENTERED: August 8, 2014

CLAIM NO. 201166415

ALFRED HALL

PETITIONER

VS. **APPEAL FROM HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE**

BROCK & BROCK CONTRACTING
and HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Alfred Hall ("Hall"), *pro se*¹, seeks review of the decision rendered January 8, 2014 by Hon. Otto

¹ Hall was represented by counsel throughout the litigation of his claim. His attorney withdrew after the filing of the appeal, and Hall proceeded *pro se*.

Daniel Wolff, IV, Administrative Law Judge ("ALJ")², dismissing his claim for injuries he allegedly sustained on October 27, 2011. No petition for reconsideration was filed.

On appeal, Hall essentially argues the ALJ's dismissal of his claim was erroneous, and not supported by substantial evidence. Because the ALJ's determination is supported by substantial evidence, and a contrary result is not compelled, we disagree and affirm.

Hall filed a Form 101 on November 21, 2012 alleging he injured his back as he was shoveling muck from under a beltline while working for Brock & Brock Contracting ("Brock") where he was employed as a general laborer at a coal mine.² The employment history Hall provided noted he worked as a coal miner from November 2001 until the date of the alleged accident on October 27, 2011.

Hall testified by deposition on February 21, 2013, and again at the hearing held November 19, 2013. He is a resident of Evarts, Kentucky, and was born on May 28, 1962. He is a high school graduate, and attended a few weeks of college, but completed no courses.

² This claim was originally assigned to Hon. Jeanie Owen Miller, ALJ, and subsequently reassigned to Hon. Allison Jones, ALJ. After ALJ Jones was appointed to the Kentucky Court of Appeals, the claim was assigned to ALJ Wolff.

Hall sustained a prior low back injury while working in Michigan in 1987. He subsequently had low back surgery in March 1988, and again in September 1988. He moved back to Kentucky after the second surgery and stated he has had back pain off and on since that time. He received a settlement for the Michigan workers' compensation claim. He later sustained a back strain from pulling a mine cable in 2000 for which he also received a settlement.

Hall's job with Brock consisted of performing several different tasks. He worked on third shift, which was a maintenance shift. He helped on a roof bolting machine, delivered supplies with a low truck, mucked the beltline, and built brattices.

Hall stated he had no restrictions for his back while working for Brock. He was actively taking Methadone prescribed by Dr. Richard Lingreen in Frankfort due to previous problems with narcotic addiction. Dr. Lingreen also prescribed Lortab for his back pain. He stated his longstanding issues with addiction also lead to some criminal activity. Brock denied his claim, and refused to pay either temporary total disability ("TTD") benefits or medical benefits, and he did not seek medical treatment until a few months after the accident. He has not returned

to work for Brock since the date of the accident, but briefly drew some unemployment benefits.

Hall testified he was untruthful to his various medical providers prior to October 27, 2011 by stating he had chronic complaints of low back pain in an attempt to obtain medication for his addiction. He admitted he was dismissed from more than one pain clinic due to misleading his physicians, and obtaining pain medication from multiple sources. He stated he was truthful about injuring his low back on October 27, 2011 as he was shoveling muck, although he had previously lied regarding his complaints of low back pain.

Hall supported his claim with the June 14, 2012 report of Dr. James Owen who he saw for evaluation at his attorney's request. Dr. Owen noted the 1988 low back injury. Hall complained of leg pain, appetite loss, dizzy spells, foot pain, cold or numb feet, numbness and tingling. Hall acknowledged a history of drug addiction, chronic pain and opioid use. Dr. Owen provided the following diagnosis:

Persistent low back pain with nonverifiable radicular symptomatology and marginal radicular sign associated with chronic narcotic usage. The statement that he was on methadone and did not tell me about it today, nor did he tell Dr. Hoskins about it, needs to be verified. It is in Dr. Jenkinson's note as such and certainly would have a

significant bearing on the possibility of active component at the time of the injury 10-27-2011. In terms of that injury, I do think there is a significant problem. I do not think it is just sprain/strain inasmuch as it has lasted so long and is associated with marginal signs; that being diminished reflex in the left ankle, mildly diminished circumference of the left thigh associated with vibratory abnormality in the left foot. However, without an MRI, it would be impossible to definitively determine a single level or whether it has multiple levels.

Dr. Owen assessed a 12% impairment rating pursuant to the American Medical Association, Guides to Evaluation of Permanent Impairment, Fifth Edition ("AMA Guides"), of which he attributed 80% to the October 27, 2011 work incident. He opined Hall should lift less than thirty pounds on a maximum basis, and avoid activities requiring bending, squatting or stooping. He stated Hall does not retain the capacity to return to the type of work performed at the time of the injury.

Brock filed the October 27, 2007 record of Dr. Sai Gutti. Dr. Gutti noted Hall's complaints of longstanding low back pain for which he had treated with Methadone and Duragesic patches. EMG/NCV studies revealed peripheral neuropathy. Dr. Gutti prescribed two epidural steroid injections, Mobic, Relafen, Lyrica and Ultram.

Brock also filed the January 25, 2012 office note of Dr. Abdul K. Dahhan. Dr. Dahhan noted Hall was injured in a motor vehicle accident on January 23, 2012 from which he complained of neck and chest pain. He noted Hall was taking Methadone and Xanax, and he prescribed Motrin 800 mg.

Dr. David Jenkinson evaluated Hall on April 18, 2012 at Brock's request. He noted the reported history of acute onset of low back pain on October 27, 2011 while shoveling mud, which radiated into Hall's left leg. Hall complained of mid-back pain radiating into the low back and left leg. He diagnosed a history of possible low back sprain/strain, and a long history of chronic back pain and opioid dependence. He noted Hall had not been candid with Dr. Robert Hoskins regarding his history and previous use of medication. He stated Brock may have sustained a minor sprain/strain, and would need no restrictions, either temporary or permanent. He assessed a 0% impairment rating pursuant to the AMA Guides. He also opined no additional treatment was required.

Brock filed an addendum prepared by Dr. Jenkinson on March 28, 2013, noting his disagreement with Dr. Owen. He specifically stated, "It is apparent that Mr. Hall had been having treatment for chronic low back pain several years prior to the alleged injury of October 27, 2011." He

cited to specific records of Drs. Lingreen and Dahhan outlining active conditions.

Brock filed records from the Cloverfork Clinic outlining Hall's treatment for complaints of low back pain from July 24, 2001 through April 10, 2006. Those records contain notations of specific treatment for acute complaints of low back pain stemming from pulling on a curtain and heavy cable on July 23, 2001, and also document continued treatment for low back pain, narcotic abuse, and overdosing of medication.

Hall treated at Harlan ARH from April 12, 1994 through April 15, 2009 for chronic low back pain resulting from his injury and subsequent surgeries in Michigan. The records document ongoing treatment with various medication including Naprosyn, Ultram, Robaxin, Oxycontin and Lortab. On April 15, 2009, Hall was advised prescriptions would no longer be written for him due to his receiving prescriptions from multiple doctors.

Dr. Gregory Dye's office notes dated August 9, 2004; September 17, 2007 and February 21, 2012 were introduced. In 2004, Dr. Dye noted Hall was treating with Xanax, Lortab and Oxycontin for his low back pain. In 2007, he noted continued complaints of low back pain and

treatment. In February 2012, Hall complained of mid and low back pain radiating into both legs.

Brock filed the records review report completed by Dr. Russell Travis on June 6, 2013. Dr. Travis opined Hall sustained no permanent injury due to the October 27, 2011 incident. He likewise assigned no impairment rating attributable to that incident. He stated he agreed with Dr. Jenkinson's report, but took issue with Dr. Owen's assessment.

Brock also filed records from the Lansing General Hospital, located in Lansing, Michigan. Those records contain the operative notes from the lumbar surgeries performed at the L5-S1 level on March 15, 1988 and September 19, 1988. The surgeries consisted of laminotomy, discectomy, and bilateral laminotomy.

Finally, Brock filed the February 18, 1991 record from the East Tennessee Orthopaedic Clinic. That record notes Hall's three and a half year complaints of low back and left leg pain. Brock was diagnosed with chronic low back pain, and status post two lumbar laminectomies.

A benefit review conference ("BRC") was held on November 13, 2013. The BRC order and memorandum reflects the issues preserved were benefits per KRS 342.730; work-relatedness/causation; injury as defined by the Act;

exclusion for pre-existing disability/impairment; and TTD benefits.

The ALJ rendered his decision dismissing Hall's claim on January 8, 2014. The ALJ cited to numerous inconsistencies between Hall's testimony and the content of his pre-injury records. He specifically stated, "It is also disconcerting when a claimant acknowledges he was willing to lie to his treating physicians in his efforts (mostly successful) to obtain narcotic medication prescriptions." He noted Hall acknowledged he had repeatedly lied to many of his pre-injury treating physicians, in particular Dr. Lingreen, to obtain medications. The ALJ also referenced the fact Hall had been dismissed from numerous pain treatment programs in the past due to violations of his prescribed course of medication management.

The ALJ further noted, "He contends his present complaints are true, he does now have back pain, but his pre-injury complaints of back pain are untrue and should now be disregarded."

The ALJ specifically found as follows:

Herein three physicians opined regarding whether or not Plaintiff's alleged present back pain and problems are connected to his alleged work incident of October 27, 2011. Defendant obtained two IME-type reports. One of Defendant's IME physicians, Dr. Russell Travis, a

neurosurgeon, conducted a records-review. The date of the first record reviewed by Dr. Travis was May 2, 1994 and the last record reviewed by Dr. Travis was dated January 21, 2013. Pursuant to his review of Plaintiff's medical records, spanning a period of almost 20-years, Dr. Travis concluded, "there was no evidence of any permanent injury. The most Mr. Hall may have suffered would be a lumbar sprain and strain on that date." The basis for Dr. Travis' conclusions was his review of approximately 100 medical records, reports pertaining to Plaintiff's pre-injury medical status, and he also read and noted Plaintiff's deposition testimony. The thoroughness of Dr. Travis' review provides compelling evidence that Plaintiff's complaints of back pain, which Plaintiff associates with his work injury, are no different than the complaints Plaintiff had on the day prior to the day of Plaintiff's possible work-related lumbar sprain or strain.

A review of Plaintiff's extensive pre-injury medical records well documents Plaintiff's pre- and post-injury complaints of back pain, are basically the same. The expert medical input of Defendant's two physicians constitutes persuasive proof Plaintiff's present complaints of back pain were not caused by his October 27, 2011 work incident.

On the issue of causation, Plaintiff's input is not credible. Almost all his medical records, for years prior to his work injury, squarely contradict what he is now contending. It is clear that prior to and at the time of his work injury, Plaintiff continuously reported basically the exact same complaints he now attempts to link to his work injury. Plaintiff cannot have it both ways.

No petition for reconsideration was filed by either party.

Hall, *pro se*, filed a hand-written document outlining what he perceived to be incorrect findings from the ALJ who he believed was mistaken. This Board accepted the tendered document as Hall's brief. Because Hall is proceeding *pro se*, we will attempt to explain the fundamental legal principles controlling how this Board must decide an appeal.

In the Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the "fact-finder." As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as there is substantial evidence of record to support the ALJ's decision. See KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although we understand Hall is frustrated regarding the dismissal of his claim, we also recognize the ALJ's job as fact-finder is difficult. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this very reason in cases where the evidence is conflicting, the facts concerning an issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

Authority establishes Hall, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of his cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Hall was unsuccessful in his burden of proving his case, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

"Compelling evidence" is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862

S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra.

Here, the record contains substantial evidence supporting the ALJ's dismissal of Hall's claim. In making his determination, the ALJ relied upon both lay and medical testimony. He specifically discussed Hall's lack of credibility due to the inconsistencies in his testimony, and his prior treatment. He also specifically noted the opinions of Dr. Travis, which constitutes substantial evidence supporting the dismissal of this claim. Therefore, a contrary result is not compelled. The ALJ properly

considered all evidence of record, weighed that evidence, and reached a decision supported by substantial evidence and in conformity with the law. Thus, we are without authority to direct a different result.

Accordingly, the January 8, 2014 Opinion and Order dismissing Hall's claim, rendered by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

PETITIONER, PRO SE:

ALFRED HALL
PO BOX 444
EVARTS, KY 40828

COUNSEL FOR RESPONDENT:

HON W BARRY LEWIS
PO BOX 800
HAZARD, KY 41702

ADMINISTRATIVE LAW JUDGE:

HON OTTO DANIEL WOLFF, IV
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601